

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

STRATEGIC INTENT, LLC, d/b/a
PALOUSE FALLS BREWING
COMPANY, *et al.*,

Plaintiffs,

v.

STRANGFORD LOUGH
BREWING COMPANY LIMITED,
et al.,

Defendants

NO. CV-09-309-RHW

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

On April 5, 2011, a bench trial was held in the above-captioned case.

Previously, the Court entered default judgment on the issue of liability against all Defendants based on their prior failures to comply with Court orders. As expected, Defendants did not appear at the bench trial. Plaintiffs were represented by John Giesa, Aaron Goforth, and Linda Schauble-Ruff.

BACKGROUND

At issue is a license and franchise agreement between Plaintiffs and Defendant SLBC, an Irish alemaker with operations in North America. Plaintiffs allege that SLBC fraudulently induced Plaintiffs to enter into the license agreement. In their Second Amended Complaint, Plaintiffs assert the following causes of action: (1) fraud/negligent misrepresentation; (2) fraud/negligent material misrepresentations in the inducement of the contract; (3) unilateral mistake; (4) violation of Franchise Protection Act; (5) violation of Consumer Protection Act; (6) breach of contract and (7) declaratory and injunctive relief. Pls. Second Amended Complaint, ECF No. 169.

FINDINGS OF FACT AND CONCLUSIONS OF LAW ~ 1

FINDINGS OF FACT

1. Plaintiffs' microbrewery business, Palouse Falls Brewing Company, was formed for the primary purpose of the production, distribution, and retail and wholesale sale of authentically Irish microbrews. *Id.* at ¶ 1.1.

2. In reliance on the specific representations made by Defendants, Plaintiffs represented to its customer base, the general public and local media, the Alcohol & Tobacco and Trade Bureau of the United States, and the government of Northern Ireland, as a brewer of exclusively authentic Irish ales, crafted in Ireland with traditional Irish recipes and ingredients directly imported from Ireland. *Id.*

3. Defendant Strangford Lough Brewing Company (SLBC) is a foreign corporation formed in Great Britain in the regions of the Home Countries of Outer London. It is not licensed to do business in the state of Washington. *Id.* at ¶1.3.

4. SLBC is purportedly in the business of the manufacturing, supplying and distributing of Irish ales and brewing equipment and technology, the development of proprietary business, marketing and sales systems, and the licensing of its proprietary business systems, its Strangford Lough brand, materials and brewing equipment and technology. It is also engaged in the business of selling exclusive licensing, franchise, distribution and manufacturing rights to its craft brand Irish ales, proprietary SLBC business systems, brewery production technology, brands, images, trademarks, trade names and logos, pursuant to a license program and package. Such comprehensive business package includes the sale and installation of a fully automated proprietary brewing equipment capable of producing a minimum production capacity of 75,000 liters of SLBC brewed products, ongoing technical assistance in all matters pertaining to the operation of a SLBC microbrewery business, and the sale of SLBC wort (*i.e.* the sugary liquid created from the first phase of the brewing process) to be used exclusively by such licensed microbrewery in the production of its SLBC craft Irish ales. *Id.*

5. SLBC owns all license, franchise, trademark and distribution rights world-

1 wide to the Strangford Lough craft ales, known as St. Patrick's Best, St. Patrick's
2 Ale, St. Patrick's Gold, Legbiter and Barelegs Brew. These beers and ales were
3 named after historical Irish figures. *Id.* at ¶4.2.

4 6. SLBC engages in business internationally, throughout the United Kingdom,
5 Europe and the North American continent. SLBC actively targeted the business of
6 U.S. citizens and was offering for sale exclusive licenses and franchises for the
7 State of Washington territory. Declaration of Jeffrey Greene Regarding Pls.
8 Damages, ECF No. 178, Ex. 1.

9 7. Defendant Robert Little is, and was at all times material to this case, a
10 director, officer, and an equity shareholder of SLBC, holding approximately two
11 hundred ninety nine (299) shares of the total one thousand (1,000) shares of the
12 issued and outstanding common stock of the corporation. Pls. Second Amended
13 Complaint, ECF No. 169, ¶1.4.

14 8. Defendant Anthony Davies, is and was at all times material to this case,
15 married to Tracey Davies. Defendant Davies is, and was, at all times material to
16 this case, a director, officer, and an equity shareholder of SLBC, holding
17 approximately six hundred ninety nine (699) shares of the total one thousand
18 (1,000) shares of the issued and outstanding common stock of the corporation. *Id.*
19 at ¶1.5.

20 9. Former Defendants James Stephenson and Wayne Stripp, in their individual
21 capacities and doing business as Strangford Lough Brewing Co.; Strangford Lough
22 Brewing Company North America; Strangford Lough Brewing Company;
23 Strangford Lough Brewing Company, Inc.; Strangford Lough Brewing Company
24 Inc., North America; and Strangford Lough Brewing Company, Inc. North
25 America, were the sole owners and operators of the above-named enterprises (all
26 said enterprises are collectively referred to herein as SLBC NA), headquartered in
27 Langley, British Columbia, Canada. SLBC NA actively targeted the business of
28 U.S. citizens and was offering for sale exclusive licenses and franchises for the

1 State of Washington territory. *Id.* at ¶1.7.

2 10. SLBC NA was incorporated on March 28, 2008 with the British Columbia
3 Registrar of Companies, Province of British Columbia, naming as its sole directors,
4 former Defendants Wayne Stripp and James Stephenson. *Id.*

5 11. Prior to November, 2008, SLBC sold its licensing franchise, trademark, and
6 distribution rights covering the North American territories to SLBC NA. SLBC NA
7 held itself out to the general public, and to Plaintiff, in particular, as the North
8 American branch office of SLBC. *Id.* at ¶4.3.

9 12. Upon acquiring the licensing and franchise rights from SLBC for the North
10 America territories, SLBC NA, in consult and coordination with SLBC, put
11 together a business prospectus and a sales and marketing scheme, detailing the
12 specifics of the licensing package to be offered to potential licensees. The business
13 prospectus also included promotional material pertaining to the strong Irish origins
14 and traditions of SLBC's trademark ale. The business prospectus further detailed
15 the rich Irish history of the situs of SLBC's base operations, indicating that the
16 business situs was located in a place in Ireland that was strongly associated with St.
17 Patrick, the patron Saint who brought Christianity to Ireland. *Id.* at ¶4.4.

18 13. Once SLBC NA secured the licensing and franchise rights, it actively
19 solicited potential licensees in the United States to compete for the exclusive
20 franchise territories. SLBC knew at the time that SLBC NA was soliciting its
21 customer base, that SLBC NA was using a name for its operations that was almost
22 identical to SLBC's name, and that SLBC NA was representing to the public that it
23 was the North American branch office for SLBC. *Id.* at ¶4.5.

24 14. As a part of its solicitation efforts, SLBC NA published, on the internet and
25 in other postings, various advertisements and a Business Prospectus summarizing
26 the licensing package and business opportunities that were being offered for sale.
27 SLBC NA, former Defendants Stephenson and Stripp knew or should have known
28 that said publication would be received by persons and entities within the State of

1 Washington. SLBC participated in the preparation of such materials. This
2 brochure made specific references to a presently operational Wort processing plant
3 located in Ireland from which Strangford Lough shipped authentically processed
4 Wort directly from Ireland to licensee's brewery, which the licensee then
5 processed into Strangford Lough's Irish beer brands. *Id.* at ¶4.6.

6 15. SLBC held itself out to the Plaintiffs as principally engaged in the business
7 of manufacturing, supplying, and distributing Irish ales and brewing equipment
8 and technology, with related marking, sales systems, brands and materials. It
9 further held itself out as engaged in the business of selling for an annual fee,
10 exclusive licensing, distributing and manufacturing rights to specified SLBC
11 territories as it pertains to its SLBC brand craft ales, as well as its brewer
12 production technology, brands, images, trademarks, trade names and logos,
13 pursuant to a licensing program and package, which package purportedly includes
14 the sale and installation of SLBC specified brewing equipment, ongoing technical
15 assistance in the distribution and the sale of SLBC wort. Declaration of Jeffrey
16 Greene, ECF No. 178, Ex. 1.

17 16. In September, 2008, Plaintiffs responded to SLBC NA's website posting of
18 openings for potential licensees of SLBC products. In the days and weeks that
19 followed, SLBC NA and Plaintiffs communicated regarding the various details for
20 the start-up of a franchise business and microbrewery in the State of Washington.
21 Pls. Second Amended Complaint, ECF No. 169 at ¶4.7.

22 17. On October 7, 2008, at the invitation of SLBC NA, Plaintiffs attended a
23 business opportunity synopsis meeting conducted by John Stephenson, Wayne
24 Stripp, and SLBC NA, that was held near Vancouver, British Columbia. The
25 invitation to attend this meeting was extended to Plaintiffs within the State of
26 Washington. *Id.* at ¶4.8.

27 18. At this meeting, various oral and written statements were provided to
28 Plaintiffs regarding the Irish origins and traditions of the craft Irish ale for which

1 the licensing, franchise, manufacturing and distribution rights were being offered.

2 *Id.* at ¶4.9.

3 19. A written business prospectus was provided to Plaintiffs at the meeting.

4 SLBC prepared or assisted in the preparation of the prospectus, as well as other
5 marketing materials. *Id.*

6 20. In the prospectus, there were more than twenty references to the Irish origins
7 and traditions of the SLBC's trademark craft ale and SLBC's base of operations.
8 The prospectus represented that SLBC's business operations were located in a
9 place that was strongly associated with St. Patrick, the patron saint who brought
10 Christianity to Ireland. It further made reference to a fully operational SLBC Wort
11 processing plant located in Ireland, equipped to make necessary shipments of
12 authentically produced Irish Wort , crafted from Irish recipes and Irish ingredients,
13 including shamrock. *Id.* at ¶4.9.

14 21. The shamrock that SLBC actually used in its beers was not grown in Ireland,
15 rather it was sourced from Germany. Deposition of Anthony Davies, ECF No.
16 180, Ex. 13a.

17 22. The prospectus also contained a financial pro forma outlining the annual
18 profitability of the SLBC Microbrewery franchise producing 75,000 liters per
19 month, which is a Case Equivalent (CE) of 8,800 CE's/month. The 75,000
20 liter/month representation in the prospectus was based on SLBC's
21 acknowledgment, made to John Stephenson in January, 2008, that the typical
22 volume of finished beer produced by a "middle of the road" U.S. microbrewery is
23 approximately 16,600 liters of finished beer per week. Using a 4.3 week/month
24 conversion factor, this equals 71,380 liters per month-within 95% of the volume
25 represented in the prospectus. Declaration of Jeffrey Greene, ECF No. 178, ¶¶5-7,
26 Ex. 1, p. 9.

27 23. In November, 2008, without Plaintiffs' knowledge, SLBC's affiliate,
28 Legbiter, LLC, a Delaware limited liability company, and SLBC purported to

1 acquire or re-acquire all rights SLBC originally sold to SLBC NA, and merged its
2 business operations with SLBC's main headquarters in Killyleagh, County Down,
3 Northern Ireland, United Kingdom. Part of the proprietary assets it received in the
4 transaction included SLBC NA's business promotional material, which included
5 the business prospectus provided to Plaintiffs and SLBC NA's business concepts
6 and marketing strategies. Pls. Second Amended Complaint, ECF No. 169, ¶4.10.

7 24. Plaintiffs were informed that nothing had changed as a result of the change
8 in the organization of SLBC and SLBC NA. After the change, SLBC acted as if it
9 was the successor in interest to all rights of SLBC NA, and continued to use, and
10 still continues to use, a substantially similar business prospectus as that used by
11 SLBC NA in its initial dealings with Plaintiffs. *Id.*

12 25. SLBC ratified and adopted all, or nearly all, of the representations that
13 SLBC NA had made to Plaintiffs or otherwise remained silent as to the accuracy of
14 the representations when questioned by Plaintiffs. *Id.* at ¶4.12.

15 26. Throughout the contract negotiations, SLBC continued to emphasize the
16 Irish origins and traditions of its Wort production facility. SLBC stressed to
17 Plaintiffs that the Irish connection was a material factor in differentiating their
18 product from other non-Irish microbrews, as there were an overwhelming number
19 of Irish descendants living in America who strongly preferred Irish ales. SLBC
20 further stressed the increased profitability that would be achieved in Plaintiffs'
21 microbrewery business, due to its ability to provide, at reduced costs, its own
22 advanced Wort supply. *Id.* at ¶4.13.

23 27. On many occasions, Plaintiffs conveyed to SLBC the paramount
24 significance of this Irish connection. SLBC assured Plaintiffs that all of the
25 ingredients used to make the advanced Wort, except the water, were grown and
26 produced in Ireland. Plaintiffs had many questions regarding the Wort processing
27 plant in Ireland. Defendants deflected inquiries and failed to directly answer these
28 inquiries. *Id.* at ¶4.14.

1 28. At one point when Plaintiffs suggested that they be accorded a tour of the
2 wort processing plant in Ireland, Plaintiffs were encouraged, instead, to visit SLBC
3 in New York City where SLBC could arrange for another tasting of SLBC brand
4 ales. At no time did SLBC advise Plaintiffs that, in actuality, there was no
5 functioning SLBC wort plant located in Ireland or elsewhere. *Id.*

6 29. On November 24, 2008, SLBC and Plaintiffs entered into an Exclusive
7 Microbrewery License, Equipment, and Wort Supply Agreement. Pursuant to the
8 terms of the contract, SLBC was to provide Plaintiffs at the cost of \$330,000.00 a
9 fully operational “turn-key” microbrewery. This was to include all the training,
10 supervision, technical support and instruction necessary for Plaintiffs to operate an
11 SLBC franchise brewery, and a fully installed and SLBC designated and
12 commissioned brewery equipment package, sufficient to implement a fully
13 operational SLBC microbrewery with a monthly minimum production capacity of
14 75,000 liters of SLBC brewed products that would be of the same color,
15 consistency, taste and quality of the SLBC brand ales it was to replicate. The
16 equipment was to be ready for shipment to Plaintiffs’ place of business on or
17 before January 9, 2009. Within fourteen (14) days after the arrival of the
18 equipment, SLBC was to have fully operational and commissioned microbrewery.
19 The first batch of product was to be brewed, bottled and kegged under SLBC
20 supervision not later than twenty-one (21) days after delivery of the said brewery
21 equipment to Plaintiffs. *Id.* at ¶4.15.

22 30. In addition, the contract provided for licensing rights to use all propriety
23 SLBC systems, equipment and technology, brands, and trademarks, all of which
24 would be supplied to Plaintiffs by SLBC for its use in the exclusive territories of
25 Washington, California, Idaho and Oregon. The contract further provided for
26 exclusive manufacturing rights of SLBC products in the state of Washington, and
27 exclusive distribution rights in Washington, California, Idaho and Oregon.
28 Plaintiffs were accorded first rights of refusal to the licensing, manufacturing rights

1 to other territories. The license term was to commence on March 1, 2009. In
2 consideration of the licensing rights, Plaintiffs agreed to pay the sum of \$50,000.00
3 for the first annual term, and \$18,000.00 for each annual term thereafter. *Id.* at
4 ¶4.16.

5 31. In accordance with the contract, Plaintiffs wired money to SLBC in the
6 amount of \$50,000.00 for the license fee and \$82,500.00 for the first
7 equipment installment payment. *Id.* at ¶4.17.

8 32. On December 23, 2008, SLBC confirmed that all of the equipment that was
9 to be delivered under the contract had been inspected and was in satisfactory
10 condition. Pursuant to the contract, Plaintiffs immediately wired money to SLBC
11 in the amount of \$165,000. *Id.* at ¶4.18.

12 33. During the period of January 18, 2009 through approximately April 9, 2009,
13 the substantial majority of the brewing equipment was delivered to Plaintiffs'
14 microbrewery. On April 30, 2009, SLBC began installing the equipment. *Id.* at
15 ¶4.19.

16 34. In the months that followed, there were numerous equipment failures. Most
17 of the equipment defects did not come to light until months later when SLBC
18 attempted to commission the equipment. *Id.* at ¶4.20.

19 35. Some of the equipment that was delivered did not conform to the terms of
20 the contract. For instance, a used bottle capping machine of a different brand than
21 what was represented to Plaintiffs was supplied by Defendants and was faulty. A
22 twenty-four spout bottler rinser was specified under the contract and a four spout
23 bottle rinser was supplied. *Id.*

24 36. There were significant problems with the cooling jacket insulation and the
25 glycol chiller compressor that significantly compromised the quality of the brew
26 products. *Id.*

27 37. Attempts were made to fix these problems, but they still remain unsolved.
28 *Id.*

1 38. Some of the specified equipment was never delivered. *Id.*

2 39. The delays, equipment failures, equipment procurement issues and non-
3 conforming items caused Plaintiffs considerable delays, loss of productivity and
4 profits, and damage to Plaintiffs' sample brews, brewing inventory and supplies.

5 *Id.*

6 40. The problems and issues continue to remain to the present day. *Id.*

7 41. Plaintiffs relied on Defendants' superior knowledge and skill to determine
8 what equipment accessories would be necessary for the efficient operation of a
9 microbrewery. *Id.* at ¶ 11.4.

10 42. Pursuant to the contract, SLBC expressly warranted for a period of one year
11 all of the equipment provided and its workmanship. Declaration of Jeffrey Greene,
12 ECF No. 178, Ex. 4.

13 43. The contract provided that SLBC was to provide Plaintiffs with SLBC's own
14 Advanced Wort shipped directly from Ireland to Plaintiffs' place of business no
15 later than February 1, 2009, provided that Plaintiffs' initial order of the wort was to
16 be received by SLBC no later than December 20, 2008. Pl. Second Amended
17 Complaint, ECF No. 169, ¶4.21.

18 44. On May 20, 2009, Plaintiffs received from SLBC the initial malt extract
19 used in the production of the wort. This was only a small sampling of what had
20 been ordered in January, 2009. *Id.*

21 45. The wort was not in conformity with the contract requirements. The malt
22 extract was not produced by SLBC. Rather, it was produced by an independent
23 malt manufacturer in Scotland using the malt manufacturer's own recipes and
24 ingredients. As a result, none of the ingredients were of Irish origin. As the wort
25 supply was not manufactured in-house by SLBC, the cost of the malt extract
26 supplied was greater than represented by SLBC. *Id.*

27 46. The wort could not replicate the authenticity of the Irish recipe, and the wort,
28 as brewed could not and did not replicate SLBC's craft ales. *Id.*

1 47. Through SLBC's attempts at performance under the contract, Defendant
2 repeatedly represented to Plaintiffs that its wort processing plant would be fully
3 operational in the very near future. Plaintiffs relied on these representations. *Id.*

4 48. As part of the bottle labeling process, SLBC's counsel worked with SLBC
5 and Plaintiffs in order to design uniform labels for all of SLBC brand brews.
6 Throughout this process, SLBC insisted that the labels carry appropriate references
7 to the Irish origins of the beer, and the Irish ingredients used to make the beer. *Id.*

8 49. The United States Alcohol & Tobacco and Trade Bureau approved the
9 SLBC brand labels that made reference to the beer having been crafted in Ireland
10 from ingredients imported from Ireland. *Id.*

11 50. Because the wort is not manufactured in Ireland with Irish ingredients,
12 Plaintiffs are unable to market any SLBC beer that may be brewed at its facility.
13 *Id.* at ¶4.23.

14 51. Until such time as SLBC had a fully functioning and operational wort
15 processing plant in Ireland and the ingredients used to produce the wort originated
16 from Ireland, the SLBC brand labels were inaccurate and misleading and could not
17 be used. Plaintiffs were not permitted to use labels that SLBC did not approve, and
18 the SLBC labels were required to be uniform. *Id.*

19 52. Because SLBC failed to perform as promised in the contract, Plaintiffs have
20 incurred and continue to incur, substantial out-of-pocket expenses. *Id.* at ¶4.24.

21 53. Plaintiffs presented Defendants with a written Notification/Cure letter. In
22 response, SLBC indicated to Plaintiffs that some of the default cannot be corrected,
23 that it had no intention of correcting others, some of the defaults Plaintiffs will
24 have to work around, and some of the defaults may be remedied in the future,
25 although no clear indication of how and when the defaults would be cured was
26 provided. *Id.* at ¶4.25.

27 54. Since receiving the letter and before the cure period expired, SLBC offered
28 to independent brewers in the United States the opportunities to manufacture and

1 distribute SLBC ales in various other territories that were not included in
2 Plaintiffs' licensing agreement. These territories are included as a part of Plaintiffs'
3 first refusal rights. SLBC has not received Plaintiffs' consent to make these offers,
4 and Plaintiffs have not been accorded the opportunity to assert its first refusal
5 rights regarding these offers. *Id.* at ¶4.28.

6 55. Plaintiffs' microbrewery continues to remain in a state of disrepair and is not
7 capable of production. The test brews do not resemble the SLBC brands. *Id.* at
8 ¶4.29.

9 56. The contract contains provisions setting forth that the SLBC wort to be
10 supplied to Plaintiffs were to be made by SLBC in Ireland. In addition, the
11 contract stated that SLBC would provide the necessary technical assistance in
12 order that Plaintiffs' brewed product would be of the same color, consistency, taste
13 and quality as if such brewed products had been brewed in Ireland by SLBC.
14 Declaration of Jeffrey Greene, ECF No. 178, Ex.4.

15 57. SLBC never had its own wort processing plant located in Ireland or
16 elsewhere. At the time of contracting, it had a limited business presence in Ireland.
17 It has never independently brewed its own beers. Pl. Second Amended Complaint,
18 ECF No. 169, ¶ 8.3.

19 58. The sample beers which were provided to Plaintiffs were contract-brewed
20 from a Scottish or English brewery with ingredients that came from many places
21 other than Ireland. *Id.*

22 59. SLBC's recipe is not authentic. It was remotely replicated from other
23 popular Irish beer brands and could not be replicated by SLBC without the same
24 ingredients, recipes and malt. *Id.*

25 60. The licensing contract at issue in this case that was initially offered to
26 Plaintiffs by Defendants SLBC NA, James Stephenson, and Wayne Stripp and
27 ultimately entered into between Plaintiffs and SLBC, pertained to the distribution
28 of goods under a marketing plan prescribed or suggested in substantial part by

1 SLBC. The marketing plan included marketing strategies, access to SLBC
2 marketing materials, volume buying power, profit and productivity information,
3 and proven sales information. The licensing package also included access to
4 advice, consultation and technical assistance pertaining to required uniform
5 trademark labeling requirements, promotional materials, the operation and
6 management of a microbrewery. The licensing program pertained to exclusive
7 locations and labels, brand name recognition and trademark protection, tested
8 marketing techniques, pre-established customer bases, assistance in a fast-tracked
9 process for federal and state licensing and permits. It also included a pre-sale
10 portion of beer production from SLBC's list of contacts. *Id.* at ¶9.2.

11 61. The operation of Plaintiffs' business under said licensing contract was
12 substantially associated with the SLBC trademark, trade name, logo, advertising
13 and commercial symbol designating, owned by, or licensed by SLBC. *Id.* at ¶9.3.

14 62. Plaintiffs paid, and were required to pay, a franchise fee in a lump sum for
15 each year of the franchise. For an additional sum and under other terms and
16 conditions, Plaintiffs were given a first right of refusal for licensing and franchise
17 rights for the territories of California, Idaho and Oregon. *Id.* at ¶9.4.

18 63. In October, 2009, Plaintiffs amended their business plan from operating a
19 75,000 liter/month or 8,800 EC per month microbrewery with exclusive
20 distribution rights in Washington, Idaho, Oregon, and California, to operating a
21 much smaller craft brewery using different equipment, recipes, ingredients,
22 processes, labeling, product names, and without any of the franchisor marketing
23 support or national brand recognition promised by SLBC. Declaration of Jeffrey
24 Greene, ECF No. 178, ¶14.

25 64. The equipment delivered by SLBC far exceeds the requirements of
26 Plaintiffs' revised operation, resulting in increased costs of production and various
27 inefficiencies in its brewery operations. *Id.* at ¶15.

28 65. Plaintiffs' average monthly production is approximately 3,300 liters of beer.

1 *Id.*

2 66. Of all the equipment Plaintiffs purchased from SLBC, Plaintiffs only use in
3 its current operations one of the six fermentation vessels, one of the three
4 maturation vessels, the hot liquor (water) tank, the Brite Beer tank, and only the
5 washing side of the keg washer/filler, as the filling side does not operate properly.

6 *Id.*

7 67. Approximately two-thirds of the leasehold expenses that were incurred to
8 follow the SLBC model are not necessary to operate under the downsized business
9 plan. *Id.*

10 68. The bottling equipment has never properly operated and all of Plaintiffs'
11 sales have been of draft beer stored in kegs. *Id.* at ¶25.

12 69. Plaintiffs paid a premium for franchise rights and opportunities that SLBC
13 was suppose to provide to Plaintiffs. Had it fulfilled its promises to Plaintiffs,
14 there would have been a ready-made market and demand for Palouse Falls
15 Brewery products. Declaration of James M. Weidenbaum, ECF No. 182, p. 15.

16 70. With respect to Defendants SLBC, Little and Davies, the contract at issue
17 provides that should Plaintiffs pursue a cause of action against SLBC, the licensor,
18 venue and jurisdiction shall be in Whitman County, Washington and the choice of
19 law shall be United States laws. Declaration of Jeffrey Greene, ECF No. 178, Ex.
20 4.

21 71. At all times material to this case, Plaintiffs solely did business in the State of
22 Washington. SLBC engages in business internationally, throughout the United
23 Kingdom, Europe and the North American Continent. Both SLBC and SLBC NA
24 actively targeted the business of United States citizens and were offering for sale
25 exclusive licenses and franchises for the State of Washington territory. Declaration
26 of Jeffrey Greene, ECF No. 178, Ex. 1.

27 72. In a February 11, 2009 email to Plaintiff Greene, Defendant Little admitted
28 that the system that SLBC had delivered to Plaintiffs was a "guinea pig" first unit

1 that was being tweaked by SLBC's master brewer as he completed the setup
2 process. Declaration of Jeffrey Greene, ECF No. 178, ¶11.

3 CONCLUSIONS OF LAW

4 1. Upon default the factual allegations of Plaintiffs' complaint are taken as
5 true, except those facts relating to the amount of damages. *Derek Andrew, Inc. v.*
6 *Poof Apparel Corp.*, 528 F.3d 696, 702 (9th Cir. 2008).

7 2. After a default judgment has been entered, a party has no right to a jury trial
8 under either Fed. R. Civ. P. 55(b)(2), which authorizes a district court to hold an
9 evidentiary hearing to determine the amount of damages, or the Seventh
10 Amendment. *Adriana Intern. Corp. v Thoeren*, 913 F.2d 1406, 1414 (9th Cir.
11 1990).

12 3. Where there is no applicable federal statute governing personal jurisdiction,
13 the district court applies the law of the state in which the district court sits. *Dole*
14 *Food Co., Inc. v. Watts*, 303 F.3d 1104, 1110 (9th Cir. 2002).

15 4. Under Washington law, "the following factors must coincide" for there to be
16 personal jurisdiction over a nonresident defendant: "(1) The nonresident defendant
17 ... must purposefully do some act or consummate some transaction in the forum
18 state; (2) the cause of action must arise from, or be connected with, such act or
19 transaction; and (3) the assumption of jurisdiction ... must not offend traditional
20 notions of fair play and substantial justice." *Noel v. Hall*, 341 F.3d 1148, 1169 (9th
21 Cir. 2003)(quoting *Shute v. Carnival Cruise Lines*, 113 Wash.2d 763, 767 (1989)).
22 These actions also satisfy the minimum contacts requirement of the federal Due
23 Process Clause. *Id.* (citing *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316
24 (1945)).

25 5. The Court has personal jurisdiction over Defendants. Defendants pursued
26 purposeful acts and business within the State of Washington, including the
27 transactions of business in this State and the commission of tortious acts in this
28 State.

- 1 6. The contacts with the States of Washington include the following:
- 2 a. Defendants actively targeted, advertised, pursued and solicited the
3 business of United States citizens, including residents from the State of
4 Washington and Plaintiffs;
- 5 b. The offers, acceptance of offers and substantial bulk of the contract
6 negotiations occurred via e-mail, postal service or by phone, at Plaintiffs'
7 principal place of business in Washington;
- 8 c. Defendants' misrepresentations of material facts; and deceptive and
9 unfair trade practices occurred in the State of Washington;
- 10 d. The place of performance of the contract was in the State of
11 Washington;
- 12 e. The personal property in dispute is located in the State of Washington;
- 13 f. The franchise business in dispute is located in the State of
14 Washington;
- 15 g. The place of the delivery of goods was in the State of Washington;
- 16 h. The place where the subject matter of the contract is located is in the
17 State of Washington;
- 18 I. The territory to which the licensing and franchise rights were to be
19 located included the State of Washington; and
- 20 j. The domicile, residence, nationality, place of incorporation and place
21 of business of the Plaintiffs are located in the State of Washington.
- 22 7. Defendants have submitted themselves to the jurisdiction of the Washington
23 courts by virtue of jurisdiction and venue clauses of the written contract between
24 the parties, Washington's Franchise Investment Protection Act, and Washington's
25 Consumer Protection Act. The State of Washington is the only jurisdiction that
26 has the most significant relationship with the causes of action in this case.
- 27 8. The Court has subject matter jurisdiction over this dispute. 28 U.S.C. §
28 1332(a) and 28 U.S.C. § 1367(a). Venue is proper in this Court.

1 9. All notices as required by federal law that were required to be given to
2 Defendants regarding all court proceedings and hearings in this matter have been
3 properly and timely made. Defendants have had full and equal access to the Court
4 and have had ample opportunity to be heard in this matter and to appear and defend
5 any and all claims made by Plaintiffs.

6 10. After entry of the Order Granting Defense Counsel's Motion for Leave to
7 Withdraw, SLBC failed to retain substitute legal counsel. Defendants SLBC,
8 Davies and Little appeared and participated at the hearing on Counsel's Motion for
9 Leave to Withdraw. SLBC was given ample opportunity to obtain legal counsel
10 but failed to do so.

11 **Piercing the Corporate Veil**

12 11. Under Washington law, a court may disregard the corporate form, but only
13 when it is intentionally used to violate or evade a duty, and when such disregard is
14 necessary to prevent unjustified loss to the injured party. *Rogerson Hiller Corp. v.*
15 *Port of Port Angeles*, 96 Wash. App. 918, 924 (1999) (citation omitted). Piercing
16 the corporate veil is an equitable remedy imposed to rectify an abuse of the
17 corporate privilege. *Truckweld Equip. Co. v. Olson*, 26 Wash. App. 638, 643
18 (1980).

19 12. In their Second Amended Complaint, Plaintiffs allege that Defendants
20 Robert Little, Anthony Davies and Michael Ross were the sole equity shareholders
21 of SLBC, and allege that throughout its dealings with Plaintiffs, SLBC disregarded
22 its corporate form, and said shareholders of SLBC intentionally misused,
23 controlled and manipulated the corporate form to accomplish fraud on their behalf
24 and at the expense of Plaintiffs. Plaintiffs also allege that SLBC was
25 undercapitalized. ECF No. 169 ¶¶ 3.1-3.6.

26 13. Defendants SLBC represented to the Court that it has minimal funds and it
27 was unable to secure counsel to proceed in this matter.

28 14. The Court disregards the corporate form of SLBC, and expressly determines

1 that the shareholders, namely Defendants Little and Davies, are personally liable
2 for the wrongdoing of SLBC towards Plaintiffs.

3 **Breach of Contract**

4 15. Generally, a party injured by breach of contract is entitled (1) to recovery of
5 all damages that accrue naturally from the breach, including any incidental or
6 consequential losses and (2) to be put into as good a pecuniary position as he
7 would have had if the contract had been performed. *Columbia Park Golf Course*
8 *Inc. v. City of Kennewick*, 160 Wash. App. 66, 82-83 (2011). Damages are not
9 recoverable for loss beyond an amount that the evidence permits to be established
10 with reasonable certainty. *Id.*

11 16. The contract at issue in this case involved the offer and sale, in Washington
12 to Washington residents, of a franchise business opportunity for a comprehensive
13 licensing, manufacturing, distribution and microbrewery package that included the
14 purchase, assembly, installation of specifically mandated SLBC brewery
15 equipment and onsite SLBC technical support, training and supervision essential to
16 the operation of a SLBC turnkey microbrewery operations.

17 17. With respect to equipment issues, there were numerous breaches of
18 performance on SLBC's part that included equipment procurement, equipment
19 defects, non-conforming equipment and equipment delays.

20 18. Plaintiffs accorded SLBC ample opportunity to cure the defaults.

21 19. These issues persist and include the following defective equipment or
22 necessary items that are required for the efficient operation of the microbrewery.

- 23 a. Non-conforming or defective bottle capping machine;
- 24 b. Defective chiller/glycol system;
- 25 c. Defective cooling jackets on the bottom of the Bright Beer tank;
- 26 d. Defective kegging equipment;
- 27 e. Broken housing on the spare pump;
- 28 f. Non-conforming bottle rinser;

- 1 g. Lacking carbon dioxide regulators for the Bright Beer tank, bottle
2 filler, and keg filler;
- 3 h. Lacking mother carton sealer;
- 4 I. Lacking calibrated site glass for the liquid level on the hot liquor tank
5 and dissolving vessel;
- 6 j. Lacking adequate work surface for the bottle transfer from pallets to
7 the bottle labeling machine;
- 8 k. Lacking adequate work surface for the bottle transfer from the
9 sanitizer to the bottle filler;
- 10 l. Lacking adequate work surface for the bottle transfer from bottle
11 capper to the carrier and mother carton packing;
- 12 m. Lacking heating element for the kegging equipment;
- 13 n. A method for pressurizing the product to the bottle filler is lacking;
- 14 o. A matching receptacle and plug for the kegging machine product
15 pump is lacking; and
- 16 p. A hose connection and undamaged fan cover for the concentrate
17 pump.

18 20. Prior to the expiration of the cure period, at no time had SLBC been able to
19 replicate the color, consistency, taste and quality of its own SLBC brands at
20 Plaintiffs' microbrewery. This was a gravamen of the contract and constitutes a
21 material breach.

22 21. The acts and conduct of Defendants as set forth in this Order constitute
23 material breaches in their performance.

24 22. Plaintiffs performed their obligations under the contract at issue and made a
25 good faith effort to mitigate their losses and damages.

26 23. SLBC's breaches of contract have proximately caused Plaintiffs to suffer
27 loss and injury.

28 **Economic Loss Rule/Independent Duty Doctrine**

1 24. The economic rule bars recovery for alleged breach of tort duties where a
 2 contractual relationship exists and the losses are economic losses. *Alejandre v.*
 3 *Bull*, 159 Wash. 2d 674, 683 (2007). If the economic loss rule applies, the party
 4 will be held to contract remedies, regardless of how the plaintiff characterizes the
 5 claims. *Id.* “The key inquiry is the nature of the loss and the manner in which it
 6 occurs , *i.e.* are the losses economic losses, with economic losses distinguished
 7 from personal injury or injury to other property. If the claimed loss is an economic
 8 loss, and no exception applies to the economic loss rule, then the parties will be
 9 limited to contractual remedies.” *Id.*

10 25. In *Eastwood v. Horse Harbor Foundation, Inc.*, the Washington Supreme
 11 Court explained that the economic loss rule is not really a rule, but “a case-by-case
 12 question of whether there is an independent tort duty.” 170 Wash. 2d 380, 389
 13 (2010). If there is no independent tort duty, tort does not provide a remedy. *Id.*

14 26. Under Washington law, SLBC has an independent duty to not commit fraud.
 15 *Id.*

16 27. Under Washington law, Plaintiffs are permitted to sue for negligent
 17 misrepresentation / fraud in the inducement, in addition to bringing a breach of
 18 contract claim.

19 **Negligent Misrepresentation / Fraud in the Inducement**

20 28. To establish negligent misrepresentation, a plaintiff must show by clear,
 21 cogent, and convincing evidence that the defendant negligently supplied false
 22 information the defendant knew, or should have known, would guide the plaintiff
 23 in making a business decision, and that the plaintiff justifiably relied on the false
 24 information. *Ross v. Kirner*, 162 Wash. 2d 493, 499 (2007). In addition, the
 25 plaintiff must show that the false information was the proximate cause of the
 26 claimed damages. *Id.*

27 29. Defendants SLBC, Davies, and Little made numerous representations of
 28 existing facts to Plaintiffs, and specifically adopted and ratified these same

1 representations of fact made by SLBC's predecessor, SLBC NA, to Plaintiffs.
2 These representations were made during the negotiations leading up to the contract
3 at issue between the parties. Such facts were false and misleading and material to
4 Plaintiffs' decision to contract with SLBC.

5 30. Defendants knowingly, willingly, and intentionally deceived Plaintiffs in
6 making said representations to them.

7 31. Defendants knew the statements were false when they were made and they
8 were made with the intent that Plaintiffs rely and act upon them.

9 32. SLBC was aware of the false and misleading representations SLBC NA
10 made to Plaintiffs during the contract negotiations. It has accepted, confirmed and
11 ratified the false and misleading representations.

12 33. Defendants SLBC, Little and Davies, in addition to the representations set
13 forth in the business prospectus and presentation, on repeated occasions and prior
14 to entering into the contract, directly stated or purposely let Plaintiffs believe by
15 their statements or silence that certain misrepresentations of material fact were
16 true, when in fact the representations were false.

17 34. The material misstatement of facts include the following representations:

- 18 a) SLBC NA was the North American branch office of SLBC;
- 19 b) SLBC had a true and legitimate business presence located in
Killyleagh, County Down, Northern Ireland;
- 20 c) SLBC had a fully operational wort processing facility located in
Killyleagh, County Down, Northern Ireland;
- 21 d) SLBC's wort processing plant was capable of shipping, directly from
Ireland, the necessary wort supply to Plaintiff;
- 22 e) SLBC directly manufactured and brewed, from its own facilities
located in Ireland, and under SLBC's direct supervision and control, the
SLBC brand craft ale. The sample beer under the SLBC brands Plaintiffs
tasted prior to contracting, and for which it was to replicate, were directly

1 brewed by SLBC from its own facilities located in Ireland;

2 f) The recipes for SLBC craft ales came from traditional and time
3 honored Irish recipes, which recipes stemmed back some one thousand
4 (1,000) years ago;

5 g) That the ingredients that were used to make the wort, including the
6 shamrock, was grown and produced locally in Ireland;

7 h) The wort that would be supplied to Plaintiffs would be authentically
8 produced in Ireland and directly shipped from SLBC's own processing plant
9 in Ireland;

10 I) The SLBC wort used to make SLBC brand craft Irish ales came from
11 a consistent source and recipe;

12 j) The wort to be supplied to Plaintiffs as part of the contract would
13 come from the same recipe and wort/supply as used to make all other SLBC
14 brands, including the sample ales Plaintiffs had tasted prior to contracting;

15 k) The wort to be supplied to Plaintiffs as part of the contract would
16 come from SLBC's own processing plant in Ireland from local Irish
17 ingredients;

18 l) The beers that Plaintiffs would produce would be of the same color,
19 consistency, taste and quality of the SLBC ales purportedly brewed in
20 Ireland by SLBC;

21 m) Plaintiffs' microbrewery equipment would be delivered and fully
22 operational within two months from contracting;

23 n) Plaintiffs' microbrewery would be fully operational and capable of
24 brewing a monthly minimum production capacity of 75,000 liters of SLBC
25 brewed products within three months from the date of contracting.

26 35. These representations were material to Plaintiffs' contract negotiations and
27 their ultimate decision to enter into the subject contract with SLBC.

28 36. All the representations set forth above are false. Defendants knew or should

1 have known that the representations were false, or that they were ignorant of
 2 the truth of the representations; and they intended that Plaintiffs would act in
 3 reliance of the false representations.

4 37. Plaintiffs have a right to rely on the representations and suffered damage.

5 38. In addition, SLBC's representation that its microbrewery system was
 6 "turnkey" necessarily connoted that its system had already been field tested and
 7 proven successful and that the turnkey system would be a standardized replica of
 8 the field tested and proven successful system.

9 39. SLBC's representations that its microbrewery system was turnkey were
 10 knowingly false when they were made.

11 40. SLBC did not have and did not provide Plaintiffs with a "turnkey"
 12 microbrewery extract dissolving system capable of producing its brews by adding
 13 water and dissolving and fermenting its wort.

14 **Franchise Investment Protection Act**

15 41. The legislature enacted Washington's Franchise Investment Protection Act
 16 (FIPA) to curtail franchisor sales abuses and unfair competitive practices. *East*
17 Wind Express, Inc. v. Airborne Freight Corp., 95 Wash. App. 98, 102 (1999). To
 18 prevent these practices, FIPA generally requires franchise offers to be registered
 19 with the state and material information be disclosed to prospective franchisees.
20 Corp v. Atlantic Richfield Co., 122 Wash.2d 574, 579-80 (1993). The information
 21 disclosed must be accurate and cannot omit material facts. *Id.*

22 42. The transactions set forth in this Order constitute sales and offers to sell a
 23 franchise or subfranchise in the State of Washington and are governed by
 24 Washington's Franchise Investment Protection Act, Wash. Rev. Code § 19.100 *et*
25 seq.

26
 27 43. Wash. Rev. Code § 19.100.170 provides:

28 It is unlawful for any person in connection with the offer, sale, or purchase

1 of any franchise or subfranchise in this state directly or indirectly:

2 (2) To sell or offer to sell by means of any written or oral communication
3 which includes an untrue statement of a material fact or omits to state a
4 material fact necessary in order to make the statements made in light of the
5 circumstances under which they were made not misleading.

6 (3) To employ any device, scheme, or artifice to defraud.

7 (4) To engage in any act, practice, or course of business which operates or
8 would operate as a fraud or deceit upon any person.

9 44. A fact qualifies as material under FIPA if a reasonable person would
10 consider it important in determining what action to take with respect to the
11 transaction in question. *Morris v. International Yogurt Co.*, 107 Wash. 2d 314,
12 324 (1986).

13 45. FIPA provides, “It is unlawful for any franchisor or subfranchisor to sell or
14 offer to sell any franchise in this state unless the offer of the franchise has been
15 registered under this chapter or exempted under RCW 19.100.030.” Wash. Rev.
16 Code § 19.100.020(1).

17 46. An application for registration must be filed with the director of financial
18 institutions and be signed by “the franchisor, subfranchisor, or by any person on
19 whose behalf the offering is to be made....” § 19.100.040(1). When the person
20 filing the registration application is a subfranchisor, the application must include
21 the same information as required of the franchisor. § 19.100.040(2). The
22 registration application must include a copy of the franchisor’s or subfranchisor’s
23 offering circular, a copy of all agreements to be proposed to franchisees, a consent
24 to service of process, and any other information the director deems necessary. §
25 19.100.040(1). A person must deliver a copy of the offering circular and any
26 proposed franchise agreements to the prospective franchisee at least 10 business
27 days before selling the franchise. § 19.100.080.

28 47. Section 19.100.020 proscribes any “franchisor” from offering or selling

1 unregistered franchises. “Franchisor” is defined as “a person who grants a
2 franchise to another person.” § 19.100.010(7). Section 19.100.140(1) proscribes
3 any “person” from offering or selling an unregistered franchise. A “person” is
4 further defined to encompass natural persons, “as well as the individual officers,
5 directors, and other persons in act of control of the activities of each such entity. §
6 19.100.010(12).

7 48. Pursuant to the FIPA, SLBC is a “franchisor.” § 19.100.010(7).

8 49. Pursuant to the FIPA, Defendants offered and sold and Plaintiffs purchased a
9 franchise or subfranchise.

10 50. Defendants are each affiliates with the other within the meaning of the FIPA.

11 51. Plaintiffs were charged and paid a franchise fee within the meaning of the
12 FIPA.

13 52. Defendants violated § 19.100.080 by failing to timely deliver to Plaintiffs
14 either an approved offering circular, or a financial disclosure document, or any of
15 the financial and other documents, information and material disclosures required to
16 be made prior to sale to a franchisee under Wash. Admin. Code §§ 460-80-125,
17 140, 300, 305 and 315.

18 53. Defendants, in connection with the offer or sale of a franchise to Plaintiffs,
19 made untrue statements of material fact and omitted numerous material facts
20 necessary in order to make the statements made in light of the circumstances under
21 which they were made not misleading, in violation of § 19.100.170(2).

22 54. Defendants employed a device, scheme and artifice to defraud, in violation
23 of § 19.100.170(3).

24 55. Defendants engaged in acts, practices, and a course of business which
25 operated as a fraud or deceit upon Plaintiffs, in violation of § 19.100.170(4).

26 56. Defendants acted in bad faith towards Plaintiffs in violation of Wash. Rev.
27 Code § 19.100.180(1).

28 57. Defendants are liable to Plaintiffs, pursuant to § 19.100.190, for the damages

1 caused by their violations of §§ 19.100.020, 19.100,080, and 19.100,170(1),(2),
2 (3), and (4).

3 58. Section 19.100.190(2) provides:

4 (2) Any person who sells or offers to sell a franchise in violation of this
5 chapter shall be liable to the franchisee or subfranchisor who may sue at law or in
6 equity for damages caused thereby for rescission or other relief as the court may
7 deem appropriate.

8 59. Section 19.100.190(3) provides:

9 The suit authorized under subsection (2) of this section may be brought to
10 recover the actual damages sustained by the plaintiff and the court may in its
11 discretion increase the award of damages to an amount not to exceed three times
12 the actual damages sustained: PROVIDED, That the prevailing party may in the
13 discretion of the court recover the costs of said action including a reasonable
14 attorneys' fee.

15 60. The Court declines to award treble damages under the FIPA. The Court
16 concludes that lost profits damages are sufficient to compensate Plaintiffs for the
17 the FIPA violations as well as achieve the goals and purposes of FIPA.

18 61. The Court exercises its discretion to award Plaintiffs their reasonable
19 attorneys fees' and costs under § 19.100.190(3).

20 62. Defendant Little and Davies are personally liable as control persons, officers
21 or directors of SLBC or their affiliates for the violations of FIPA and the damages
22 suffered by Plaintiffs as a result of the FIPA violations. § 19.100.10(13).

23 **Washington Consumer Protection Act**

24 63. The Washington Consumer Protection Act (WCPA) prohibits entities and
25 individuals engaged in trade or commerce from employing unfair or deceptive
26 practices in the course of conducting business with consumers. § 19.86.020.

27 64. A person who has been injured in his or her business or property may bring a
28 civil action for injunctive relief, actual damages sustained, and reasonable attorney

1 fees and costs, and that person may seek treble the amount of actual damages up to
 2 \$25,000. § 19.86.090.

3 65. To prevail on a WCPA claim, “a plaintiff must establish five distinct
 4 elements: (1) unfair or deceptive act or practice; (2) occurring in trade or
 5 commerce; (3) public interest impact; (4) injury to plaintiff in his or her business or
 6 property; [and] (5) causation.” *Hangman Ridge Training Stables, Inc. v. Safeco*
 7 *Title Ins. Co.*, 105 Wash. 2d 778, 780, 719 P.2d 531 (1986).

8 66. “Ordinarily, a breach of a private contract affecting no one but the parties to
 9 the contract is not an act or practice affecting the public interest.” *Id.* at 538.
 10 However, if there is a “likelihood” that other plaintiffs will be injured similarly, a
 11 private, contract breach could still impact the public interest. *Id.* The factors
 12 indicating a public interest impact are:

13 (1) Were the alleged acts committed in the course of defendant's
 14 business? (2) Did defendant advertise to the public in general? (3) Did
 15 defendant actively solicit this particular plaintiff, indicating potential
 16 solicitation of others? (4) Did plaintiff and defendant occupy unequal
 17 bargaining positions?

18 *Id.*

19 67. Defendants' acts and misconduct set forth in this Order constitute unfair
 20 methods of competition and unfair or deceptive acts or practices in the conduct of
 21 trade or commerce pursuant to the WCPA.

22 68. The unfair or deceptive acts and practices committed by Defendants impact
 23 and affect the public interest. Defendants' unfair or deceptive acts and practices
 24 proximately caused Plaintiffs to suffer injury to their business or property for
 25 which injuries Plaintiffs are entitled to recover damages.

26 69. If a corporate officer participates in wrongful conduct or with knowledge
 27 approves of the conduct, then the officer as well as the corporation, is liable for the
 28 penalties. *Grayson v. Nordic Constr. Co.*, 92 Wash. 2d 548, 554 (1979).

1 70. Defendants Little and Davies have participated in, or with knowledge,
2 approved, ratified, or acquiesced in the violations of the CPA. As such, these
3 Defendants are personally liable to Plaintiffs for such violations and the damages
4 caused.

5 71. The Court declines to award treble damages under WCPA. The Court
6 concludes that lost profits damages are sufficient to compensate Plaintiffs for the
7 WCPA violations as well as achieve the goals and purposes of WCPA.

8 72. The Court exercises its discretion to award Plaintiffs their reasonable
9 attorneys fees' and costs under § 19.85.090.

10 **Damages**

11 73. As a result of the breaches in performance in contract, the material
12 misrepresentations of fact made in the inducement of the contract, and with respect
13 to the franchise business it sole to Plaintiffs, the false advertising and unfair
14 methods of competition and unfair or deceptive trade practices in the conduct of
15 trade or business, Plaintiffs have suffered and continues to suffer damages.

16 74. Plaintiffs attempted to mitigate these damages by operating the current
17 microbrewery operation under a substantially downsized business plan, using
18 whatever equipment it could salvage for its production capabilities and local
19 demand, and conducting operations from the premises it leased under a minimum five
20 year lease.

21 75. Plaintiffs have elected the remedy of affirmation of the contract and seek an
22 award of damages arising from the breach of contract, tort, and statutory causes of
23 actions under the Washington Consumer Protection Act (Wash. Rev. Code § 19.86
24 *et seq.*) and the Washington Franchise Investment Protection Act (Wash. Rev.
25 Code § 19.100 *et seq.*).

26 76. Under Washington law, torts which can properly be said to be done in the
27 management of community business, or for the benefit of the community, will
28 remain community torts with the community and the tortfeasor separately liable.

1 *deElche v. Jacobsen*, 95 Wash. 2d 237, 246 (1980). A debt is presumed to be a
 2 community obligation; the burden of proving that a debt is not community
 3 obligation rests on the community. *Pacific Gamble Robinson Co. v. Lapp*, 95
 4 Wash. 2d 341, 343 (1980). As such, the judgment issued herein against the
 5 individual Defendants shall also be a judgment against the individual Defendants'
 6 marital communities.

7 77. Plaintiffs have suffered injury as a proximate result of Defendants' wrongful
 8 conduct.

9 78. "The purpose of damages in a breach of contract action is 'not the mere
 10 restoration to a former position, as in tort, but the awarding of a sum which is the
 11 equivalent of performance of the bargain—the attempt to place the plaintiff in the
 12 position he would be in if the contract had been fulfilled.'" *Columbia Park Golf*
 13 *Course*, 160 Wash. App. at 86 (citation omitted).

14 79. Lost profits may be recovered when "(1) they are within the contemplation
 15 of the parties at the time the contract was made; (2) they are the proximate result of
 16 defendant's breach, and (3) they are proven with reasonable certainty. *Larsen v.*
 17 *Walton Plywood Co.*, 65 Wash. 2d 1, 15 (1964).

18 80. The "new business rule" ordinarily prevents an unestablished business from
 19 recovering lost profits as damages for breach of contract. *Id.* Profits for a new
 20 business are generally "too speculative, uncertain, and conjectural to become a
 21 basis for the recovery of damages." *Columbia Park Golf Course*, 160 Wash. App.
 22 at 88 (citation omitted). Such damages may be recovered, however, if a reasonable
 23 estimate can be made by analyzing market conditions and profits of substantially
 24 similar businesses. *Id.*

25 81. Additionally, the costs the plaintiffs would have incurred had there been no
 26 breach must be considered in determining the plaintiffs' lost profits. *See Platts v.*
 27 *Arney*, 50 Wash. 2d 42, 46 (1957).

28 82. Lost profits were within the contemplation of the parties and were the

1 proximate result of Defendants' misconduct.

2 83. James M. Weidenbaum was a qualified expert to testify as to the lost profits
3 experienced by Plaintiffs as a result of SLBC's breaches of contract.

4 84. Mr. Weidenbaum concluded that Plaintiffs paid a premium for franchise
5 rights and opportunities that SLBC was suppose to provide to Plaintiffs and had
6 SLBC fulfilled its promises, there would have been a ready-made market and
7 demand for Palouse Falls Brewery products. The Court accepts this conclusion as
8 true.

9 85. Plaintiffs had well-founded and solid reasoning to believe and expect that
10 had SLBC delivered on its premises, Plaintiffs would have found profitable market
11 success.

12 86. The SLBC business prospectus calculated the expected annual profit of
13 \$433,283.00.

14 87. The SLBC NA Business Prospectus calculated the expected annual profit of
15 \$580,284.00

16 88. Mr. Weidenbaum provided reasonable estimates that analyzed market
17 conditions and profits of substantially similar business, without resort to
18 speculation. As such, the Court concludes that it is appropriate to award damages
19 for lost profits.

20 89. The Court concludes that the five-year period is appropriate. Any
21 computation of damages beyond the five-year period would be too speculative to
22 support an award for lost profit damages.

23 90. Mr. Weidenbaum concluded that there has been a significant loss of
24 production rights.

25 91. The Court concludes that damages based on "loss of brand equity" are too
26 speculative to award under Washington law.

27 92. The Court awards damages in the amount of **\$1,459,300.00**, which is the
28 value of the lost profits projected over five years.

1 93. In Washington, where the plaintiff is faultless and there are multiple
2 tortfeasors, the defendants against whom judgment has been entered are jointly and
3 severally liable for the plaintiff's total damage. Wash. Rev. Code § 4.22.070.

4 94. Wash. Rev. Code § 4.22.070(a) states:

5 A party shall be responsible for the fault of another person or
6 for payment of the proportionate share of another party where both are
7 acting in concert or when a person was acting as an agent or servant of
the party.

8 95. Acting in concern means consciously acting together in an unlawful manner.

9 *Yong Tao v. Heng Bin Li*, 140 Wash. App. 825, 832 (2007).

10 96. All named Defendants acted in concert in the preparation of the false and
11 misleading materials that were supplied to Plaintiffs and acted in concert to harm
12 Plaintiffs, or acted independently of each other but caused indivisible harm by their
13 tortious conduct.

14 97. Defendants SLBC, Little, and Davies are jointly and severally liable for all
15 damages sustained by Plaintiffs.

16 **Injunctive Relief**

17 98. Based on this Order and the Court's previous Order Granting Plaintiffs'
18 Motion for Anti-Suit Injunction (ECF No. 101), this Court grants the following
19 Declaratory and Permanent Injunctive Relief:

20 99. Plaintiffs are granted Declaratory Judgment, declaring as follows:

- 21 a. That Plaintiffs in their business enterprise have not made use of any
22 alleged knowhow belonging to SLBC through their relationship with SLBC;
- 23 b. That Plaintiffs in their business enterprise have not made use of any
24 alleged confidential information acquired/obtained by Plaintiffs in the course
25 of their relationship with SLBC;
- 26 c. That Plaintiffs have not made use of any alleged intellectual property
27 and trademarks belong to SLBC;
- 28 d. That Plaintiffs have not passed off their company and products as

1 those of SLBC;

2 e. That SLBC is not entitled to any damages from Plaintiffs for any
3 alleged use of confidential business information, and that SLBC is not
4 entitled to any accounting of any profits or otherwise from Plaintiffs, and is
5 not entitled to any order of payment to SLBC upon any such claims;

6 f. That SLBC is not entitled to delivery by Plaintiffs of any documents
7 allegedly in the possession, power and control of Plaintiffs allegedly
8 consisting of advertising or other promotional materials allegedly belonging
9 to or allegedly copied from materials allegedly belong to SLBC;

10 g. That SLBC is not entitled to an award of damages for alleged loss and
11 damages allegedly sustained due to any alleged use of SLBC's goodwill by
12 Plaintiffs and alleged appropriation of confidential business information of
13 SLBC;

14 h. That SLBC is not entitled to any other relief from any Court against
15 Plaintiffs;

16 I. That SLBC is not entitled to an award of costs from any Court against
17 Plaintiffs.

18 j. That SLBC is not the owner or licensee of any protected image,
19 advertising, logo, or idea or intellectual property that it alleges to have been
20 wrongfully used or appropriated by Plaintiffs and SLBC lacks standing to
21 make or prosecute any such claims.

22 100. Plaintiffs are granted a permanent injunction against SLBC enjoining it, its
23 officers, directors and any persons having or exercising control over SLBC, and
24 any person or entity in active concert or participation with SLBC having actual
25 knowledge of this Injunction, from continuing the proceeding in Northern Ireland
26 under the caption *Strangford Lough Brewing Company Ltd.*, Plaintiffs and
27 *Strategic Intent LLC trading as Palouse Falls Brewing Co. and Jeffrey Greene and*
28 *Melinda Greene*, Defendants, in the High Court of Justice in Northern Ireland,

1 Queen's Bench Division, 2010 No. 93647 ("Northern Ireland Suit").

2 101. SLBC, its officers, directors and any persons having or exercising control
 3 over SLBC and any person or entity in active concert or participation with SLBC
 4 having actual knowledge of this Order, are hereby ordered to cause the Northern
 5 Ireland Suit to be dismissed with prejudice (or the most comparable procedural
 6 mechanism under Northern Ireland Law).

7 102. Plaintiffs are granted a permanent injunction against SLBC enjoining it, its
 8 officers, directors and any person having or exercising control over SLBC, and any
 9 person or entity in active concern or participation with SLBC having actual
 10 knowledge of this Injunction, from attempting to relitigate, or collaterally attack in
 11 any other jurisdiction, any of the claims adjudicated in this action.

12 **Attorney Fees**

13 103. The Court finds that the facts underlying the multiple claims are so
 14 intertwined that the related fees cannot feasibly be segregated. *Simpson v.*
Thorslund, 151 Wash. App. 276, 289 (2009).

16 104. The Court finds that Plaintiffs' request for attorneys' fees to be reasonable.
 17 Specifically, the hourly rates billed by Plaintiffs' counsel, as well as the number of
 18 hours billed by Plaintiffs' counsel, are reasonable.

19 105. The Court awards fees for the work performed by Plaintiffs' counsel's non-
 20 lawyer personnel. *See McGeevey v. Oregon Mut. Ins. Co.*, 90 Wash. App. 282, 292
 21 (1998), *disapproved on other grounds by Panorama Village Condominium*
Owners Ass'n Bd. of Directors v. Allstate Ins. Co., 144 Wash. 2d 130 (2001).

23 106. The Court awards attorneys' fees in the amount of \$213,237.70 and costs in
 24 the amount of \$24,276.25.

25 ///

26 Accordingly, **IT IS HEREBY ORDERED:**

27 1. The District Court Executive is directed to enter judgment in favor of
 28 Plaintiffs and against Defendants Strangford Lough Brewing Company, Robert

1 Little and Anthony Davies, jointly and severally. The judgment shall include lost
2 profits damages in the amount of \$1,459,300.00 and reasonable attorneys' fees and
3 costs in the amount of \$213,237.70 (fees) and \$24,276.25 (costs).

2. The hearing set for May 13, 2011, is stricken.

5 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
6 Order and forward copies to Plaintiffs' counsel and the individual Defendants at
7 their addresses of record.

DATED this 11th day of May, 2011.

s/Robert H. Whaley
ROBERT H. WHALEY
United States District Judge

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